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**FILED**

OCT 19 2011

OSTEOPATHIC MEDICAL BOARD  
OF CALIFORNIA

9 **BEFORE THE**  
10 **OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 00-2010-2807

13 **AGINAH M. DEBERRY, D.O.**  
14 **P.O. Box 4680 Rancho Cucamonga, CA**  
**91729-4680**

**A C C U S A T I O N**

15 **Osteopathic License No. 20A7624**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Donald J. Krpan, D.O. (hereinafter "Complainant") brings this Accusation  
21 solely in his official capacity as the Executive Director of the Osteopathic Medical Board of  
22 California, Department of Consumer Affairs.

23 2. On or about September 25, 2000, the Osteopathic Medical Board of California  
24 issued Osteopathic License Number 20A7624 to Aginah M. DeBerry, D.O. (hereinafter  
25 "Respondent"). The Osteopathic License was in full force and effect until its expiration on  
26 December 31, 2004. It remained expired for almost five years. On December 7, 2009,  
27 respondent's Osteopathic License was reinstated with an inactive status. On June 28, 2010,  
28 respondent's Osteopathic License was automatically suspended pursuant to Business and

1 Professions Code section 2236.1, based on respondent's federal incarceration for a felony  
2 conviction. Her license remained suspended until February 18, 2011, at which time respondent  
3 was released from prison and her Osteopathic License was reinstated with an inactive status.  
4 Respondent's inactive Osteopathic License, Number 20A7624, will expire on December 31,  
5 2012, unless renewed.

### 6 JURISDICTION

7 3. This Accusation is brought before the Osteopathic Medical Board of California  
8 (Board), Department of Consumer Affairs, under the authority of the following laws. All section  
9 references are to the Business and Professions Code (Code) unless otherwise indicated.

10 4. Section 118, subdivision (b), of the Code states:

11 "The suspension, expiration, or forfeiture by operation of law of a license  
12 issued by a board in the department, or its suspension, forfeiture, or cancellation by  
13 order of the board or by order of a court of law, or its surrender without the written  
14 consent of the board, shall not, during any period in which it may be renewed,  
15 restored, reissued, or reinstated, deprive the board of its authority to institute or  
16 continue a disciplinary proceeding against the licensee upon any ground provided by  
17 law or to enter an order suspending or revoking the license or otherwise taking  
18 disciplinary action against the licensee on any such ground."

19 5. Section 3600 of the Code states that the law governing licentiates of the  
20 Osteopathic Medical Board of California is found in the Osteopathic Act and in Chapter 5 of  
21 Division 2, relating to medicine.

22 6. Section 3600-2 of the Code states, in pertinent part:

23 "The Osteopathic Medical Board of California shall enforce those  
24 portions of the Medical Practice Act identified as Article 12 (commencing with  
25 Section 2220), of Chapter 5 of Division 2 of the Business and Professions Code, as  
26 now existing or hereafter amended, as to persons who hold certificates subject to the  
27 jurisdiction of the Osteopathic Medical Board of California."

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1           7.    Section 2227 of the Code provides that a licensee who is found guilty under the  
2 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
3 one year, placed on probation and required to pay the costs of probation monitoring, be publicly  
4 reprimanded, or have such other action taken in relation to discipline as the Board deems proper.

5           8.    Section 2234 of the Code states:

6                “The Division of Medical Quality shall take action against any licensee  
7 who is charged with unprofessional conduct. In addition to other provisions of this  
8 article, unprofessional conduct includes, but is not limited to, the following:

9                “(a) Violating or attempting to violate, directly or indirectly, or  
10 assisting in or abetting the violation of, or conspiring to violate, any  
11 provision of this chapter.

12                “. . . .

13                “(f) Any action or conduct which would have warranted the denial  
14 of a certificate.

15                “. . . .

16           9.    Section 2236 of the Code provides, in pertinent part, that:

17                “(a) The conviction of any offense substantially related to the qualifications,  
18 functions, or duties of a physician and surgeon constitutes unprofessional conduct  
19 within the meaning of this chapter. The record of conviction shall be conclusive  
20 evidence only of the fact that the conviction occurred.

21                “. . . .”

22                “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere  
23 is deemed to be a conviction within the meaning of this section and Section 2236.1.  
24 The record of conviction shall be conclusive evidence of the fact that the conviction  
25 occurred.”

26           10.   Section 125.3 of the Code states, in pertinent part, that the Board may request  
27 the administrative law judge to direct a licensee found to have committed a violation or

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1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
2 and enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of a Crime)**

5 11. Respondent is subject to disciplinary action under sections 3600, 3600-2, 2227  
6 and 2234, as defined by section 2236 of the Code, in that respondent was convicted of a crime  
7 substantially related to the qualifications, functions, or duties of an osteopathic physician and  
8 surgeon, as more particularly described hereinafter:

9 A. On or about February 14, 2007, an Indictment was filed in the matter  
10 entitled *United States of America v. Paul Arnold Lessler, Alexander Zinovy Rivkin,*  
11 *Gershon Walter Helpner, Xinming Fu, Ramin Sarshad, Aginah M. DeBerry, Michael*  
12 *Wayne Chapman, Truc Huy Dao, Glenn Garcia Madrid, Levy Raichik, Schmucl*  
13 *Fogelman, and Barbara Sue Thrash*, United States District Court, Central District of  
14 California, Southern Division, Case No. SACR07-0021.

15 B. As to respondent, the Indictment alleged that respondent engaged in a  
16 Conspiracy to Commit Health Care Fraud, a violation of 18 U.S.C., § 371; Health  
17 Care Fraud, a violation of 18 U.S.C., § 1347; Aiding and Abetting Health Care Fraud,  
18 a violation of 18 U.S.C., § 2; Money Laundering, a violation of 18 U.S.C. §1956  
19 (a)(1)(A) and Mail Fraud, a violation of 18 U.S.C. 1341. With respect to respondent,  
20 the Indictment alleged, in part, that:

21 1. Respondent operated her medical practice under the name  
22 of Four Points Family Medical Center, Inc., which was an enrolled  
23 provider with Medicare, a federal health insurance program operated  
24 by the United States Department of Health and Human Services. In  
25 order to lawfully obtain Medicare reimbursement for providing  
26 respiratory treatment to patients, respondent was required to render  
27 and/or directly supervise the respiratory treatments in her medical  
28 office.

1                   2.     Count One of the Indictment alleged that from on or  
2     about December 2002 through May, 2003, respondent conspired with  
3     other individuals to participate in a scheme to defraud Medicare.

4                   3.     The Indictment also alleged that between December 2002  
5     and May, 2003, Respondent paid illegal kickbacks to individuals  
6     (marketers) who identified residents at a board and care facility for  
7     respiratory treatments, and that the marketers, in turn, paid illegal  
8     kickbacks to the owners and administrators of the board and care  
9     facility for referring residents for the respiratory treatments.

10                  4.     The Indictment further alleged that while respondent  
11     provided or supervised respiratory treatments to the residents who  
12     resided in the board and care facility, she billed Medicare under the  
13     false pretense that respondent was rendering and directly supervising  
14     the respiratory therapist at her medical office.

15                  C.     On or about December 2, 2009, respondent pled guilty to Count One of  
16     the Indictment, violating 18 U.S.C. §371 (Conspiracy to Commit Health Care Fraud).  
17     The remaining counts against her were dismissed. The Judgment and  
18     Probation/Commitment Order sentenced Respondent to serve one year plus one day  
19     in federal prison, to thereafter be placed on home detention, have three years  
20     supervised release, to pay a special assessment of \$100.00, to pay restitution in the  
21     sum of \$707,800.00, to notify the Medical Board of her conviction, and to have other  
22     terms and conditions of release and probation.

23                  D.     On or about June 28, 2010, respondent entered federal prison as part of  
24     her sentence following her criminal conviction for conspiracy to commit health care  
25     fraud. She was released from prison on or about February 18, 2011.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Osteopathic Medical Board of California issue a  
4 decision:

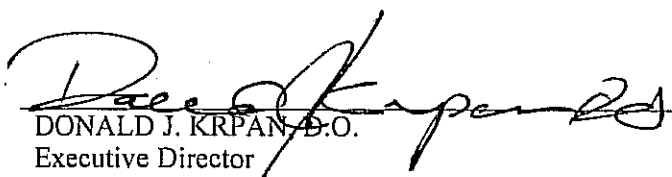
5 1. Revoking or suspending Osteopathic License Number 20A7624,  
6 heretofore issued to respondent Aginah M. DeBerry, D.O.;

7 2.. Revoking, suspending or denying approval of respondent Aginah M.  
8 DeBerry, D.O.'s authority to supervise physician's assistants, pursuant to Section  
9 3527 of the Code;

10 3. Ordering respondent Aginah M. DeBerry, D.O. to pay the  
11 Osteopathic Medical Board of California the reasonable costs of the investigation and  
12 enforcement of this case, pursuant to Business and Professions Code section 125.3;  
13 and

14 4. Taking such other and further action as deemed necessary and  
15 proper.

16  
17 DATED: October 19, 2011

18   
19 DONALD J. KRPAN, D.O.  
20 Executive Director  
21 Osteopathic Medical Board of California  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

25 SD2010701808  
26 80548926.doc  
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28

**DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL**  
(Separate Mailings)

**In the Matter of the Accusation Against:**  
**Aginah M. De Berry, D.O.**  
**Case No: 00-2010-2807**

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 1300 National Drive, Suite 150, Sacramento, CA 95834.

On **October 19, 2011**, I served the attached **Accusation, Statement to Respondent, Request for Discovery, Notice of Defense (two copies) and copy of Government Code sections 11507.5, 11507.6 and 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Accusation, Statement to Respondent, Request for Discovery, Notice of Defense (two copies) and copy of Government Code sections 11507.5, 11507.6 and 11507.7** as enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Osteopathic Medical Board of California addressed as follows:

**NAME AND ADDRESS**

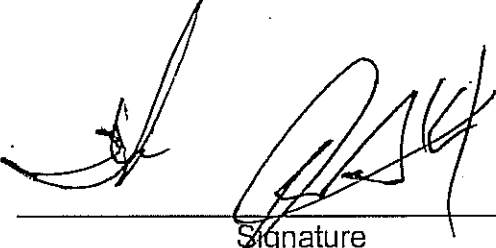
(certified and regular mail)

Aginah M. De Berry, D.O.  
P.O. Box 4680  
Rancho Cucamonga, CA 91729-4680

Certified Mail No.  
7010 3090 0001 0877 4056

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 19, 2011 at Sacramento, California.

\_\_\_\_\_  
Felisa Johns Scott  
Declarant

\_\_\_\_\_  
  
Signature

cc: Beth Faber Jacobs, Deputy Attorney General